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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/664,472	09/18/2000	Peter A. Graef	WEYC116081	4308

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CHRISTENSEN, O'CONNOR, JOHNSON, KINDNESS, PLLC  
1420 FIFTH AVENUE  
SUITE 2800  
SEATTLE, WA 98101-2347

EXAMINER

WEBB, JAMISUE A

ART UNIT PAPER NUMBER

3761

DATE MAILED: 02/12/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/664,472

Applicant(s)

GRAEF ET AL.

Examiner

Jamisue A. Webb

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-52 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-52 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 September 2000 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Information Disclosure Statement*

1. The information disclosure statement filed 4/30/01 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance of reference FR 2468689, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. It has been placed in the application file, but the information referred to therein has not been considered.

### *Drawings*

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the acquisition layer having an area being less than and the same as the area of the storage layer, being one band of absorbent material forming liquid distribution zones, leg gathers and both the acquisition layer and the storage layer being made of the composite material must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "100, 102, 104, 106, 110, 112, 114, 116, 120, 122, 124 and 126" have been used to designate both parts of the machine used to manufacture the composite and different

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embodiments of the absorbent article. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 2 and 3 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. With respect to Claim 2: the phrase “the distributions zones are substantially free of absorbent material” is indefinite. In claim 1 it states that absorbent material is in bands to form the distribution zones. How can the absorbent material make up the distribution zones, yet the distribution zones be free of absorbent material? Due to the fact that the examiner is unclear what this claim is trying to claim, a lack of a prior art rejection does not indicate that this claim is allowable.

7. Claim 3 recites the limitations "the composite's length" and "the machine direction". There is insufficient antecedent basis for these limitations in the claim.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1, 3, 6-22, 28, 30-32, 35 and 38-52 are rejected under 35 U.S.C. 102(b) as being anticipated by Dragoo et al. (5,486,167).
10. With respect to Claims 1, 3, 31, 35, 38-42, 44 and 51: Dragoo discloses the use of an absorbent article, such as a diaper, sanitary napkin, or incontinence guard (see abstract), with the use of a topsheet (24), backsheet (26), and a multiple layer absorbent composite (28), with a storage layer (32), distribution layer (34) and an acquisition layer (30), located there between. Dragoo discloses the absorbent composite comprising a storage layer with cross-linked cellulose fibers (column 12, lines 60-61) with absorbent gelling material within the fibers that are placed in strips (column 15, lines 62-64).
11. With respect to Claim 46 and 50: Dragoo discloses the acquisition layer may be comprised of any combination of materials, including those of the absorbent storage layer (column 8, line 31-35), which includes a fibrous matrix of cellulose fibers with absorbent bands of material.
12. With respect to Claims 6 and 7: See column 14, lines 11-13.
13. With respect to Claim 8, 9, 12 and 16: Dragoo discloses the use of a second set of fibers that are made of synthetic fibers such as polyester fibers (column 13, lines 40-43), at 10-90% of weight of the storage core (column 12, lines 19-21).
14. Claims 10, 11, and 13 are rejected as being drawn to an unselected species of Claim 9.
15. Claims 14, 15 and 17 are rejected as being drawn to an unselected species of Claim 8.

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16. With respect to Claims 18, 22, 32 and 49: Dragoo discloses the use of the absorbent material of is a hydrogel-forming polymer (column 14, line 3).
17. With respect to Claim 19: See column 14, lines 11-13.
18. With respect to Claims 20 and 21: See column 14, lines 36-37.
19. With respect to Claim 28: See column 16, lines 26-27.
20. With respect to Claim 30: See column 12, line 44.
21. With respect to Claim 43: See column 5, lines 22-37.
22. With respect to Claims 45 and 52: See reference numeral 38
23. With respect to Claim 47 and 48: See Column 7, lines 12-34.

***Claim Rejections - 35 USC § 103***

24. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

25. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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26. Claims 4, 5, 27 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dragoo et al. (5,846,167).

27. With respect to Claim 4 and 5: Dragoo discloses the claimed invention except for the bands are parallel and discontinuous over the length of the composite. It would have been an obvious matter of design choice to have the bands be parallel or discontinuous over the composite's length, since applicant has not disclosed that the bands being parallel or discontinuous solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with the bands of Dragoo.

28. With respect to Claim 27 and 29: Dragoo discloses the claimed invention except for specifically reciting that the basis weight of the composite is between 50-1000 g/m<sup>2</sup>, and the cross-linked cellulose fibers of the absorbent matrix being present in the amount of 45% weight of the total composite. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the basis weight of the composite be between 50 and 1000 g.m<sup>2</sup> and the cellulose fibers being 45% of the total weight of the composite, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

29. Claims 23-26, 33, 34, 36 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dragoo et al. (5,486,167 in view of Young et al. (5,217,445).

30. With respect to Claims 23 and 24: Dragoo, as disclosed above, fails to disclose the use of a wet strength agent. Young discloses the use polyacrylamide resin as a binding means for increasing physical integrity (column 16, lines 30-43). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the absorbent composition of

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Dragoo, include the polyacrylamide resin, of Young, in order to increase the physical integrity of the composition (see Young, column 16).

31. With respect to Claims 25 and 16: See Young, column 16, lines 60-62.

32. With respect to Claim 33, and 36: Dragoo, as disclosed above for claim 1, discloses the claimed invention, but fails to disclose the layers being wet-laid. Young discloses the use of a wet-laying process to form a cellulose web (columns 12 and 13). It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the absorbent composite of Dragoo, from a wet-laid process due to the fact that wet-laid structures wick body fluids better than similar air-structures, and are significantly stronger. (see Young column 14)

33. With respect to Claim 34 and 37: Dragoo and Young, disclose the claimed invention expect for the article being made by a foaming process. It would have been an obvious matter of design choice to have the article being made by a foaming process, since applicant has not disclosed that the foaming process solves any stated problem, or is for any particular purpose and it appears that the invention would perform equally well with a wet-laid process of forming the article.

### *Conclusion*

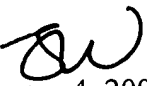
34. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hamajima et al. (6,068,619) discloses the use of a multi-layered absorbent structure with superabsorbent dispersed in a fibrous matrix.

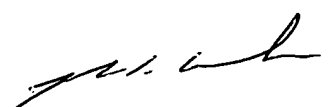
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jamisue A. Webb whose telephone number is (703) 308-8579. The examiner can normally be reached on M-F (7:30 - 4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John G. Weiss can be reached on (703) 308-2702. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

jaw   
February 4, 2002

  
John G. Weiss  
Supervisory Patent Examiner  
Group 3700